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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1082

IN RE NATHAN GROSSGOLD, AN ATTORNEY,
*Petitioner.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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## INDEX.


| | PAGE |
|---|---|
| Opinion Below | 1 |
| Jurisdiction | 1 |
| Questions Presented | 2 |
| Constitutional Provisions Involved | 2 |
| Statement | 3 |
| Reasons for Granting the Writ | 5 |
| Conclusion | 11 |
| Appendix (Opinion of the Supreme Court of Illinois) | 1A |

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The Petitioner, Nathan Grossgold, respectfully prays that a writ of certiorari issue to review the judgment and order of the Supreme Court of Illinois suspending Petitioner from the practice of law for three years.

### OPINIONS BELOW.

The opinion of the Supreme Court of Illinois has been officially reported at 58 Ill. 2d 9, 317 N. E. 2d 45 (1974) but has also been reproduced as an appendix to this petition.

### JURISDICTION.

The judgment of the Supreme Court of Illinois ordering that Petitioner be suspended from the practice of law for a period of three years was entered on September 17, 1974. A petition for rehearing was timely filed in October, 1974. Said petition for rehearing denied November 27, 1974. A petition for reconsideration and in the alternative a motion for reinstatement was filed. Said motion was denied January 15, 1975. The jurisdiction of this court is invoked pursuant to the provisions of Title 28, United States Code 1257(3).

## QUESTIONS PRESENTED.

1. Did the failure of the Commissioners of the Supreme Court of Illinois to state reasons for the increase of the discipline recommended to the Supreme Court from three years suspension to disbarrment, deny Petitioner, Grossgold, his right to Due Process under the Fourteenth Amendment to the Constitution of the United States?
2. Should the Supreme Court of the Illinois have taken into account, Petitioner, Grossgold's pardon from the President of the United States for his conviction of mail fraud which was the basis of the disciplinary action against him?

## CONSTITUTIONAL PROVISIONS.

Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 2, Section 2, Clause 1 to the Constitution of the United States:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and *he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.* (Emphasis added).

## STATEMENT.

In June, 1968, Petitioner, Nathan Grossgold, was indicted by the Grand Jury for the United States District Court for the Northern District of Illinois, Eastern Division, in thirteen separate counts charging violations of the mail fraud statute, 18 U. S. C. 1341, Count I of the indictment charged a scheme to defraud certain insurance companies and that count as well as each of the others describes specific mailings allegedly in execution of the scheme. Named in all 14 counts in the indictment was Melvin Bornstein, Petitioner's brother-in-law. Nine of the 14 counts were selected for trial before the Honorable Richard B. Austin and a jury. Both Petitioner and Bornstein were found guilty of all nine counts. Judgment of conviction was entered; Judge Austin sentenced Bornstein to the custody of the Attorney General for a period of two years on each count to run concurrently. Petitioner was fined $3,500.00. No prison term nor period of probation was imposed upon him.

The judgment was affirmed by the Court of Appeals for the Seventh Circuit in an opinion reported at 447 F. 2d 742 (7th Cir. 1971). Petitioner filed a Petition for a Writ of Certiorari in this Court which was denied, 404 U. S. 851. On May 19, 1969, the Committee of Inquiry of the Chicago Bar Association filed a complaint against Grossgold alleging he was "guilty of conduct which tends to bring the legal profession into disrepute and of conduct unbecoming a member of the legal profession." This was the first complaint filed against Grossgold since being admitted to practice in the State of Illinois in August of 1962 or indeed since his initial admission to the bar of the State of New York in 1941.

On September 19, 1972, Division II of the Committee on Grievances of the Chicago Bar Association sitting as Commissioners of the Supreme Court of Illinois began hearing evidence on the complaint. The Committee on Inquiry presented

documentary evidence consisting of the indictment, docket entries, judgment of conviction, and five volumes of transcripts from the criminal case and the opinion of the Court of Appeals. The only oral testimony elicited by the Committee of Inquiry was that of Petitioner called as adverse witness under the applicable section of the Illinois Civil Practice Act.

Petitioner admitted the allegations of the compaint, relating to his indictment, conviction, and sentence. On the fifth allegation that he brought the profession into disrepute, there was no direct evidence.

For the remainder of the hearing on September 19th, and on two subsequent hearing dates, Petitioner presented oral and written evidence pertaining to his limited participation in the criminal acts, to the facts and opinions known to Judge Austin when he sentenced Petitioner and to Grossgold's character and professional reputation. There was no rebuttal evidence by the Committee of Inquiry.

In its report of February 27, 1973, Division II recommended that Respondent be suspended from the practice of law for a period of three years. Objections to that report were filed and oral argument had before the entire Committee on Grievances. The full committee overruled the objections and recommended that Petitioner be disbarred without advancing any reasons to support its conclusion. Again, objections were filed and oral argument had before the Board of Managers of the Chicago Bar Association who approved the recommendations of the Committee.

In the Supreme Court of Illinois, Petitioner contended there was a fundamental unfairness in the hearings which denied him due process under the Fourteenth Amendment to the Constitution of the United States and under Article 1, Section 2 of the Constitution of the State of Illinois. Petitioner also advised the Supreme Court of Illinois that he had pending before the President of the United States a petition for executive pardon in connection with his conviction.

On September 17, 1974, the Supreme Court of Illinois delivered an opinion suspending Petitioner from the practice of law for a period of three years. The opinion did not specifically deal with Petitioner's contention that his rights under the Constitution of the United States were violated. A petition for rehearing was filed in Supreme Court again recommending that any suspension be stayed until such time as the President of the United States acted on Grossgold's petition for pardon. The Supreme Court denied the petition for rehearing. On December 18, 1974, Petitioner's attorneys were advised that on that date, Gerald R. Ford, the President of the United States, granted Petitioner a full and unconditional pardon. A petition for reconsideration or in the alternative for reinstatement to the practice of law was filed in the Supreme Court of Illinois. The Court denied Petitioner's motions without an opinion.

**REASONS FOR GRANTING THE WRIT.**

The issue presented in this matter involves the due process right of an attorney in disciplinary proceedings to be apprised of the reasons for an increase in the discipline recommended by a committee by the Supreme Court of Illinois.

Over a century ago, Mr. Justice Field of this Court termed the practice of law by a qualified person as a right and not as a matter of the state's grace or favor and that it "is a right of which [such a person] can only be deprived by the judgment of the court, for moral or professional delinquency" *Ex Parte Garland*, 4 Wall 333 (1867). To assist in the determination of whether an individual should be denied this right, Rule 751 of the Rules of the Supreme Court of Illinois, Chap. 110 A, Ill. Rev. Stat., establish commissions to hear and receive evidence and to recommend action which is then examined by the Supreme Court.

In attorney disciplinary proceedings in Illinois the findings of the Board of Governors of a Bar association are entitled to

virtually the same weight as findings of any initial trier of fact. *In re Broverman*, 60 Ill. 2d 302; 239 N. E. 2d 816 (1968). The Supreme Court of Illinois has also held that the full Committee or the Board of Managers of a Bar Association have the right to increase or decrease the discipline recommended by the initial hearing examiner. Although petitioner does not contend there is error in permitting such an increase, we do submit if such an increase is recommended, petitioner has a right to know the reasons for such an increase, so he may adequately respond to the recommendation before the Supreme Court and thus defend his right to practice law.

This Court and other Courts have held in analogous cases procedural due process requires a statement of reason by decision makers for the denial of certain rights to individuals. We contend that such a requirement as a matter of fundamental fairness should be extended to an attorney who is being subjected to disciplinary action.

In *Goldberg* v. *Kelly*, 397 U. S. 254 (1970), a case involving an administrative determination of a welfare recipient's eligibility for public assistance payments, this Court held:

> "To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, cf. *Wichita R. & Light Co.* v. *PUC*, 260 U. S. 48, 57-59, 67 L. Ed. 124, 129, 130, 43 S. Ct. 51 (1922), though his statement need not amount to a full opinion or even a formal findings of fact and conclusions of law." 397 U. S. 254, 271.

There have been numerous federal cases which have followed the basic tenants of *Goldberg* v. *Kelly* requiring a statement of reasons as a matter of administrative due process. Those cases have involved such diverse areas as denial of Medicare payments to a convalescent home, *Coral Gables Convalescent Homes, Inc.* v. *Richardson*, 340 F. Supp. 647 (S. D. Fla. 1972); and prison inmate disciplinary actions, *Krause* v. *Schmidt*, 341 F. Supp. 100 (W. D. Wisc., 1972), and *Landman* v. *Royster*, 333 F. Supp.

621 (E. D. Virg., 1971). In parole revocation proceedings, this Court held that minimum due process requires "a written statement by factfinders as to the evidence relied on and *reasons* for revoking parole." *Morrissey* v. *Brewer*, 408 U. S. 471, 489 (1972) [Emphasis Added.]

We submit, based on the minimum standards of procedural due process as described above, Petitioner was denied this fundamental right in connection with what can only be considered an arbitrary increase in the recommended discipline. As a result, the major thrust of Petitioners argument before the Supreme Court of Illinois had to contest the recommendation of disbarrment. Even that argument had to be over broad because Petitioner had no idea of the basis for the recommendation. He could only superficially argue that even a suspension of three years was too severe and unwarranted. The Court's opinion reflected the effect of such an argument in merely returning to the original hearing committee's initial recommendation of three years suspension without specifically ruling upon the contention that a lessor discipline was appropriate.

The case books are replete with other decisions requiring statements of reasons for decisions. The Commissioners of the Supreme Court of Illinois should have stated its reasoning in this case. As stated by Mr. Justice Marshall in his dissenting opinion in *Board of Regents* v. *Roth*, 408 U. S. 564 (1972):

> ". . . [I]t is not burdensome to give reasons when reasons exist" 408 U. S. 564, 591.

Petitioner, in his brief for the Supreme Court of Illinois apprised that Court of the pendency of his petition for executive pardon and suggested that the Court delay decision a reasonable length of time so the results of the petition would be available. The Court refused to follow that suggestion and filed its opinion.

After Grossgold's Petition for Rehearing was denied and a Motion to Stay the Mandate of the Court was granted pending the filing and ruling on this petition, Petitioner's attorneys were

advised that on December 18, 1974, the President of the United States had granted Grossgold a full and unconditional pardon on his federal mail fraud conviction, the basis of the disciplinary action. Immediately, Petitioner moved the Court below to reconsider its suspension order of September 17 or to reinstate Petitioner to the bar. On January 15, 1975, the Court denied Petitioner's motion without an opinion.

In its opinion suspending Petitioner the Illinois Supreme Court specifically relied on two cases, *In re Fumo*, 52 Ill. 2d 307 (1972) and *In re Hutul*, 54 Ill. 2d 209 (1973). Those cases held that in disciplinary proceedings, conviction of a crime involving moral turpitude, *i.e.*, Mail Fraud; is *conclusive evidence* of an attorney's guilt and is a ground for disbarrment, but although the conviction is conclusive evidence, it does not preclude the consideration of other evidence such as the actual conduct of the attorney in mitigation to determine the appropriate discipline. 317 N. E. 2d 45, 46 & 47. In relying on the above mentioned cases, the Supreme Court of Illinois found that the actions of Grossgold were not of the same degree of culpability present in *Hutul* and *Fumo*. 317 N. E. 2d 45, 48.

Neither in the opinion cited above nor in the order denying Petitioner's motion for Reconsideration did the Illinois Supreme Court specifically rule on the effect of the Presidential Pardon. The question we bring to this Court concerns the effect the Illinois Supreme Court should have given to the Pardon. We submit that such action by the Chief Executive should have been accorded great weight by that Court.

The major decisions of this Court concerning the effect of Executive Pardons or Amnesty, were written in the late nineteenth century, concerning the effect of President Andrew Johnson's pardoning of individuals who participated in the Civil War on the side of the Confederacy. The primary issue presented in those cases involved the effect of a pardon as it related to the loss of property under confiscation statutes. Those cases held that the pardon erases not only the criminal conviction but also any pen-

alties or disabilities attendant upon it. *Armstrong's Foundry* v. *United States,* 6 Wall. 766; (1868) also *Illinois Central Railroad Co.* v. *Bosworth,* 133 U. S. 92 (1889); also *Jenkins* v. *Collard,* 145 U. S. 540 (1892). Thus permitting the pardoned individuals to reacquire the interest in the confiscated property, which they had lost to the United States by their alleged traitorous acts.

The case most nearly approaching the issue presented in this case is *Ex Parte Garland,* 4 Wall. 333 (1867). That case involved an attorney admitted to practice before this Court and other Federal Courts prior to the beginning of the Civil War. In 1865, Congress enacted a statute which required all individuals, before they could be permitted to practice before this and other Federal Courts, to take an oath of allegiance to the national government even if said attorneys had been previously admitted to practice. In July of 1865, Garland received a full pardon from the President of the United States for any treasonable acts he may have committed in supporting the Confederacy. After accepting the pardon, Garland petitioned this Court to continue to practice before it without taking the required oath and he presented his pardon to the Court in support. In granting his petition, this Court held, per Mr. Justice Field:

> "Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.
>
> There is only this limitation to its operation; it does not restore offices forfeited, or property or interests vested in

> others in consequence of the conviction and judgment. 4 Bl. Com. 402; 6 Bac. Abr. tit. Pardon; Hawk, book 2, Ch. 37, §§ 34, 54.
>
> The pardon produced by the petitioner is a full pardon "for all offenses by him committed, arising from participation, direct or implied, in the Rebellion," and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offense of treason, committed by his participation in the Rebellion. So far as that offense is concerned, he is thus placed beyond the reach of punishment of any kind. But to exclude him, by reason of that offense, from continuing in the enjoyment of a previously acquired right, is to enforce a punishment for that offense not withstanding the pardon. If such exclusion can be effected by the exaction of an expurgatory oath covering the offense, the pardon may be avoided, and that accomplished directly which cannot be reached by direct legislation. It is not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency." 4 Wall. 333, 380-381.

This court has held that a pardon proclaimed by the President of the United States has the same force and effect as a public law and of which all courts and officers must take notice. *Jenkins* v. *Collard*, 145 U. S. 546, 560-561 (1891). The Supreme Court of Illinois failed to give effect to Grossgold's Pardon, but relied specifically on the fact of conviction. It avoided the pardon and accomplished indirectly what could not be reached directly. Accordingly, it acted unconstitutionally in limiting the President's plenary pardoning power. The Illinois Supreme Court could not constitutionally consider the fact of Petitioner's federal conviction as grounds for disciplinary action. Since it did rely on that conviction, this court should grant the Writ and remand this case to the Illinois Supreme Court to reconsider Petitioners suspension in the light of the Presidential pardon he received.

## CONCLUSION.

To review whether petitioner was denied due process of law by the failure of the Commissioners of the Supreme Court of Illinois to give reasons for the increase in the discipline to be recommended to the Court, and because the Supreme Court of Illinois failure to take into consideration petitioner Pardon from the President of the United States, we respectfully petition this Court to issue its Writ of Certiorari to the Supreme Court of Illinois.

Respectfully submitted,

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Chicago, Illinois,
*Attorneys for Petitioner.*

February, 1975.

# APPENDIX.

## OPINION.

## SUPREME COURT OF ILLINOIS.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September in the year of our Lord, one thousand nine hundred and seventy-four, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER

JUSTICE DANIEL P. WARD

JUSTICE JOSEPH H. GOLDENHERSH

JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE CHARLES H. DAVIS

JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHALL

ATTEST: JUSTIN TAFT, CLERK

Be It Remembered, that afterwards, to-wit, on the 17th day of September, 1974, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

NATHAN GROSSGOLD, an Attorney } Information
No. 46062 }

Docket No. 46062—Agenda 10—May, 1974.

*In re* NATHAN GROSSGOLD, *Attorney, Respondent.*

MR. JUSTICE DAVIS delivered the opinion of the court:

This is a disciplinary proceeding against the respondent under Supreme Court Rule 751 (Ill. Rev. Stat. 1967, ch. 110A, par. 751), wherein the sole meritorious issue is the measure of discipline to be imposed against the respondent.

The Committee of Inquiry of the Chicago Bar Association filed a complaint against Grossgold on May 19, 1969, alleging that he was "guilty of conduct which tends to bring the legal profession into disrepute and of conduct unbecoming a member of the legal profession." Hearings were had before the Committee on Grievances of the Chicago Bar Association sitting as Commissioners of this court, after which Division II of the Committee on Grievances recommended that the respondent be suspended for three years. The respondent filed objections thereto, and oral argument was had before the entire Committee on Grievances, which overruled the objections and recommended disbarment. Again objections were filed and argument had before the Board of Managers of the Chicago Bar Association, which body approved the recommendation of disbarment.

The proceedings were brought in response to the respondent's conviction in the Federal District Court for the Northern District of Illinois on nine counts of mail fraud in violation of 18 U.S.C.A. sec. 1341. His conviction was affirmed on appeal in *United States* v. *Bornstein and Grossgold* (7th Cir. 1971), 447 F. 2d 742, *cert. denied* (1971), 404 U. S. 851, 30 L. Ed. 2d 91, 92 S. Ct. 88.

In *In re Fumo* (1972), 52 Ill. 2d 307, at page 309, this court stated:

> "Prior decisions of this court have established that in disciplinary proceedings, conviction of a crime involving moral turpitude is conclusive evidence of an attorney's guilt and is a ground for disbarment *(In re Eaton* (1958), 14 Ill. 2d 338, 340; *In re Teitelbaum* (1958), 13 Ill. 2d

> 586, 588); and that violation of section 1341 of Title 18 of the United States Code (18 U.S.C.A. sec. 1341) is a crime involving moral turpitude. In the case of *In re Needham* (1936), 861 Ill. 65, at page 70, the court said: 'Attempting to obtain the money or property of others by fraud or false pretenses, whether the use of the mails or otherwise, involves moral turpitude.' Also see: *In re Eaton* (1958), 14 Ill. 2d 328. The respondent does not question the validity of these precedents, but contend that the recommendation that he be disbarred is too severe."

The respondent here is in the same position as the respondent in *In re Fumo.*

In *In re Hutul* (1973), 54 Ill. 2d 209, at pages 214 and 215, this court quoted the following language from *In re Crane* (1961), 23 Ill. 2d 398, 400-401, which, in considering the proper approach to such matters, stated:

> While the conviction is conclusive evidence of guilt, it does not preclude consideration of other evidence for the purpose of determining the appropriate disciplinary action. After all, a respondent is being disciplined not because of his conviction but because of his conduct. The actual conduct itself is certainly relevant to a determination of the appropriate discipline to be accorded. Just as every conviction of a crime does not require the same punishment, so all convictions of crimes involving moral turpitude do not require the same discipline. Thus, a consideration of the actual conduct of the respondent is not only proper, but may be indispensable, to an informed appraisal of the appropriate disciplinary action.' "

We must look therefore to all of the circumstances surrounding the respondent's commission of the crime of mail fraud.

The respondent moved to Chicago from New York City in the summer of 1962. He had apparently been successfully engaged in the private practice of law in New York for a number of years, and came to Illinois in order to go into business with Melvin S. Bornstein, his brother-in-law, in starting an insurance company, and for the further reason of living closer to his wife's

family. We think it is fair to say that the prospective insurance business was the controlling consideration.

The criminal proceedings in the Federal court reflect that Melvin S. Bornstein and Albert Rosenthal formed the Whitehall Insurance Company in 1961. In May of 1961 they acquired an inactive insurance company and proceeded to have it activated as the Whitehall Mutual Fire and Marine Insurance Company. It was upon the activation of this company that Bornstein persuaded the respondent to come to Illinois. The respondent became claims manager of Whitehall in 1962.

In March, 1963, the respondent's employment with Whitehall ceased, and he operated as a private practitioner with offices in the Whitehall building, and handled subrogation claims for Whitehall against other insurance companies and uninsured motorists on a 25-percentage basis. In December, 1963, Whitehall ceased doing business and its assets and records were turned over to the Illinois State Bureau of Liquidations in November of 1964.

The degree of culpability of Bernstein and Grossgold became apparent in the evidence at the criminal trial. A distinction in the culpability of the defendants was recognized in their sentencing. The United States District Court imposed a two-year imprisonment sentence on Bornstein and imposed a fine on Grossgold.

The respondent's total profit from the fraudulent acts consisted of legal fees in the sum of $586.76; the bulk of the fraudulently obtained funds inured to Whitehall Insurance Company.

The evidence which substantiates the charges was summarized by the Seventh Circuit Court of Appeals, 447 F. 2d 742, 744, as follows:

> "Defendants contend there is insufficient evidence to support the guilty verdicts. We see no reason to discuss in detail the abundant proof adduced at trial to sustain the verdict. The fraudulent scheme was shown by the testimony of Palumbo, one of the garage owners involved in the scheme, that either Bornstein or Grossgold would call him to make

arrangements for repair of a damaged automobile covered by a Whitehall policy. After examining the car, Palumbo would make up a written estimate for the cost of repairs and convey it to Whitehall, and an agreement would be made between Palumbo and Bornstein or Grossgold to repair the automobile at a cost lower than the estimate. The estimate, marked 'paid,' would then be sent to the insurer of the person whose car collided with that of Whitehall's insured, along with a subrogation claim written by Grossgold. Whitehall would then be paid the amount stated on the estimate.

This testimony was fully corroborated by Whitehall's files. For example, insured Baugh's file, used in proof of Count V, contains an estimate on Palumbo's stationery in the amount of $190.25, marked 'paid'; cover letter written by Grossgold to Economy Fire and Casualty Co., insurer of the driver of the other automobile involved in the Baugh collision, referring to 'the paid repair bill in the amount of $190.25' which was sent with the letter; and a check from Economy in the amount of $190.25 made payable to Baugh and/or Grossgold. The file also shows a bill from Palumbo for 'agreed price $150.00' minus '$100.00 Ded.,' with a balance due of $50.00; a check made payable to Palumbo in the amount of $50.00 signed by Melvin Bornstein on behalf of Whitehall; and a letter to insured Baugh directing him to pay his $100.00 deductible directly to Palumbo. Palumbo testified that he and Whitehall agreed on $150.00 to make that particular repair, and that he received $100.00 of that amount from the insured (the policy had $100.00 deductible) and $50.00 from Whitehall. The pattern was followed, generally, with respect to each count in the indictment.

There is ample proof to justify the jury in inferring that both Bornstein and Grossgold knowingly participated in the proven scheme to defraud. In addition to Palumbo's testimony as to the active participation of both Bornstein and Grossgold, there is the testimony of Pekin, another Whitehall employee who occasionally wrote letters regarding subrogation claims, that Bornstein told him that the reason the subrogation claims were inflated was to cover legal costs

and handling expenses. And the record also contains a note written by Bornstein to Grossgold directing Grossgold to see if he could collect on another subrogation claim, and if he could, Whitehall would 'pay and get subro agreement for better amount.'

There is also evidence that Grossgold, who directly handled the subrogation claims, wrote a note to an uninsured motorist whose car had collided with that of a Whitehall insured, concerning arrangements for payment of a subrogation claim in the amount of $500.00. The top of the Whitehall file in that case reflected that total payments by Whitehall were only $350.00, and Grossgold admitted that he had written on the Whitehall file a notation of a conversation with the uninsured motorist. And the note from Bornstein and another note from Palumbo indicated that Grossgold was aware that Whitehall sent out inflated subrogation bills, even if Grossgold did not pursue the claims in those particular cases. There is substantial evidence that both Bornstein and Grossgold knew the subrogation claims were fraudulent."

In light of the recent decisions of this court in *In re Hutul* and *In re Fumo*, the only remaining question is whether the factual circumstances of the instant situation differ sufficiently from those in the aforesaid cases to justify a penalty less drastic than disbarment.

Although the fraud was accomplished by the respondent through his role as an attorney, it is apparent that the driving force behind the fraudulent scheme and the man chiefly responsible for it was Bornstein. The actions of this respondent, while certainly requiring discipline, are not of the same degree of culpability as was present in *Hutul* and *Fumo*.

This is the only stain on the respondent's legal record in 30 years of practice, but this conduct did tend to bring the legal profession into disrepute, was unbecoming to the respondent, as a member of the profession, and does warrant some sanction against the wrongdoer. However, in view of his past unblemished prior record, and his minor role in the fraudulent scheme, we

believe the objectives of disciplinary proceedings in this case are adequately served by the respondent's suspension from practice for a period of three years, and it is so ordered. Such sanction will tend to protect the public from improprieties by members of the bar and will assist in upholding the integrity of the bar.

***Respondent suspended.***